

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 99-0415RO
Sales/Use and Withholding Tax – Responsible Officer
For Years 1996 - 1998**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Responsible Officer Liability – Duty to Remit Withholding and Sales Taxes**

Authority: Ind. Code § 6-8.1-5-1.

The taxpayer protests the assessment of withholding and sales tax liability as a responsible officer.

STATEMENT OF FACTS

The taxpayer is the President of an Indiana water treatment company that did not submit sufficient withholding and retail sales taxes to the Department of Revenue for the period 1996 through 1998. The Department assessed liability for the taxes to the taxpayer as a responsible officer. An administrative hearing was held on March 15, 2000. No evidence was presented prior to the hearing or during the hearing. The taxpayer's representative requested, and was granted, three additional weeks to submit evidence showing that the taxpayer was not a responsible officer. No evidence was ever submitted.

I. Responsible Officer Liability – Duty to Remit Withholding and Sales Taxes**DISCUSSION**

The taxpayer protests the assessment of retail sales tax and withholding tax as a responsible officer. The taxpayer maintains that during a portion of the period in question he was a salesman for the company while his brother was the President. At some point, early in 1997 according to the taxpayer's representative, the taxpayer did become President of the company and hired another person to act as Controller. The taxpayer maintains that the Controller failed to pay the taxes due. No evidence, however, has been submitted to show that the taxpayer is not a responsible officer of the company.

“The notice of proposed assessment is *prima facie* evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” Ind. Code § 6-8.1-5-1(b). The taxpayer has failed to meet his burden of proof that the assessment is wrong, therefore he is liable for the taxes due.

FINDING

The taxpayer’s protest is denied.